

COMMUNITIES COMMITTEE CALL FOR VIEWS ON THE PRIVATE TENANCIES BILL

Response By EHNI

November 2021

Key comments

Environmental Health has a very long tradition of involvement in the private rented sector, primarily through its role in regulation of housing standards but also in respect of its statutory duties under the Public Health Acts. The enhanced powers devolved to district councils under the Private Tenancies (NI) Order 2006 (PTO) along with the transfer of the regulation of Houses in Multiple Occupation (HMOs) in 2018, confirms the importance of the evolving role that district councils have in regulating the private rented sector. EHNI therefore welcomes that it has been seen as a key consultee in this process

Following on from this Committee's call for evidence, the decisions taken by the Department relating to areas that impact in the development of a long-term strategy for the private rented sector, will have a significant impact on the existing and evolving regulatory and advisory roles of Councils and other stakeholders in relation to its statutory housing functions

Therefore, whilst the additional regulation of the privately rented sector is to be welcomed, the resourcing of these additional powers, potentially being granted to Councils, will require to be evaluated in advance by the Department before commencement. There is no indication from the Department that any additional funding will be made available to Councils and that the introduction of some fixed penalty offences is not an adequate model, or sufficiently evidenced to fund the additional resources required. There will be additional and new work for Councils if they are required to undertake this role. A properly evaluated analysis impact on Councils would need to be undertaken and a suitable funding model identified and agreed before these can be facilitated and commenced so that there is no impact on the rate payers due to additional burdens to Councils.

Clauses 1 and 2:

Tenant to be given notice regarding certain matters; grant of tenancy:

This introduces a requirement for the landlord of a private tenancy to provide the tenant, free of charge, with a written statement of the main terms of the tenancy within 28 days of the granting of the tenancy. The information and details of the tenancy required to be included in

the notices provided by landlords will be prescribed in regulations made by the Department. This clause will apply to all new tenancies.

Tenant to be given notice regarding certain matters; variation of certain terms:

Tenant to be given notice regarding certain past matters

This clause enables any tenant where the tenancy was granted on or after 30 June 2011 (date that previous Article 4 was repealed) but before the date on which the Bill comes into operation to be provided, free of charge, with a written statement of the main terms of the tenancy or any alterations to said agreement.

***Comment:** These provisions are to be welcomed as all tenants should be provided with the necessary information in respect of their tenancy. There may be significant resources required from landlords and Councils as the enforcing authority, following the 29th day after the retrospective clause is commenced due to every existing tenancy granted on or after 30 June 2011 potentially having to be provided prescribed information in prescribed format sent to their tenants. EHNI would be interested in exactly what terms the landlord will have to provide to the tenant and how tenants will be made aware of their right to a retrospective statement. In Scotland and England, landlords are also obliged to issue tenants with an “easy read” guide to assist the tenants in understanding the terms of their agreement. Model tenancy terms have also been issued by these devolved governments to assist landlord and letting agents. There will be an opportunity for Councils to discharge this offence through the fixed penalty regime.*

EHNI would like to know what the Department’s plans are for the Tenancy Terms Regulations (Northern Ireland) 2007 which that at the time prescribed the information required. What is the status of these regulations as they were made under Article 4(1) and 72(1) of the PTO2006? <https://www.legislation.gov.uk/nisr/2007/87/made>

This Bill will reintroduce Article 4 into the PTO. The above-named regulations as written could be considered outdated and will need reviewed and changed.

The regulations giving the ‘prescribed’ information should be in place before commencement.

EHNI considers that a longer lead-in time or time required to comply would be needed for landlords of retrospective tenancies to help manage this change in requirement.

Clause 3: Tenant to be provided with a rent receipt for payment in cash

The substitution will remove the requirement for landlords to provide tenants with a rent book. However, Clause 3 aims to provide safeguards for tenants by requiring that the landlord provides the tenant, free of charge, with a receipt for rent paid in cash. The receipt must contain certain prescribed information. Paragraph (8) provides for the offence to be a continuing offence and allows for punishment where a landlord is deemed to commit a further offence.

Comment: *This change is welcomed to bring receipting of rent payment in line with current practices. The requirement states as soon as reasonably possible so guidance will be to be issued to define this. The Department may want to consider introducing a requirement for landlords to provide a receipt for cash tenancy deposits.*

There will be an opportunity for Councils to discharge this offence through the fixed penalty regime.

Clause 4: Limit on tenancy deposit amount; Breach of tenancy deposit limit; recoverability of excess

This clause limits the amount of deposit that is required in connection with a private tenancy to no more than 1 month's rent and where an excess of 1 month's rent has been paid then the amount exceeding that amount is recoverable by the person that paid it. This will only apply to deposits received after the commencement of this Bill and not retrospectively to those deposits taken before the legislation comes into operation.

Comment: *It should also be noted that the fees associated with renting a property can also contribute to affordability issues for households on low incomes. This can be particularly acute for benefit claimants, working poor and students. There appears to be more financial assistance to renters in England. EHNI would be concerned that the limit on a deposit may lead landlords to ask for 2 months' rent in advance which isn't protected by the deposit scheme. The section relating to the recovery of an excess deposit states that the court may order the excess deposit to be paid back after a conviction. This would mean that matters discharged by a fixed penalty would not result in excess deposit be recovered.*

The Department should consider the introduction of a limit on landlords asking for more than one month's rent in advance. In the Republic of Ireland from August 2021, landlords can only

ask one month's deposit and one month's rent in advance. Northern Ireland does not currently have a statutory regulatory framework for letting agents or for letting agent fees. The Commission on the Disposals of Land (Northern Ireland) Order 1986 covers this issue, but this requires tenants to take their own action. EHNI would have welcomed regulations to regulate letting agents within this Bill.

There will be an opportunity for Councils to discharge this offence through the fixed penalty regime.

Clause 5: Tenancy deposit schemes: time limits

This extends the time limits for a deposit to be protected in an approved scheme in paragraph (3) from 14 days to 28 days and gives additional time for a landlord to provide the information to the tenant and amends paragraph (6)(b) from 28 days to 35 days.

Comment *This proposal appears to be designed to assist landlords/agents who manage several properties where the tenancies change at specific times of the year.*

Clause 6: Certain offences in connection with tenancy deposits to be continuing offences

Clause 6 amends Article 5B of the 2006 Order making the offences under Article 5B (3) or (6) a continuing offence as long as the tenancy deposit breach persists. There will be no time barrier on prosecuting a person who fails to comply with the set requirements.

Comment: *This amendment is welcomed as currently there is a 6-month statute time bar on cases being presented in court.*

Clause 7: Restriction on rent increases

This provides that the rent payable under a private tenancy may not be increased more than once in any 12-month period. This will mean that there is no restriction upon when the first increase may take place but there must be a minimum of 12 months between increases. Any proposed increase should be made in writing and applies to any private tenancy, except a controlled tenancy

Comment: *This clause has no detail regarding an offence for not doing what is required, no penalty for not adhering to the requirements and no enforcement authority in relation to investigation of this matter. EHNI would also have concerns relating to historic rent increases. This clause would seem to imply that the offence may be taken back to first 12 months of the tenancy.*

There is a mechanism for tenants in both Scotland and the Republic of Ireland to challenge a rental increase and to have it reassessed by a third party. There appears to be no such plans for NI.

If regulations are made to specify circumstances in which this requirement does not apply, it should be made very clear that it should be substantial work when referring to 'renovated, refurbished, altered or extended'.

Clause 8: Fire, smoke and carbon monoxide

This sets out a requirement on private landlords to provide fire, smoke and carbon monoxide detectors and details the landlord and tenant duties with regard to these.

The Department will subsequently bring forward proposals in regulations with the standards expected which are intended to reduce the risk of injury or death caused by fire, smoke or carbon monoxide.

This clause provides that a landlord is guilty of an offence under this Order with punishment and prosecution of offences up to level 4 on the standard scale, paragraph (4) refers to the option to consider a fixed penalty notice under the 2006 Order fixed penalty regime.

Comment: *EHNI is disappointed that the review of the Fitness standard was not included in this Bill and the following clauses do not go far enough to improve physical standards in the sector and that the Bill should consider all matters affecting the risk of fire and escape from fire. It has been previously highlighted to the Department that 2-bedroom flats which were regulated under the old NIHE HMO regime, have no regulation in terms of fire safety and means of escape. This gap needs to be addressed urgently by the Department. EHNI understands that the review of the Fitness Standard will be part of phase 2 of the review of the private rented sector and EHNI are keen to participate in this review.*

EHNI would request that the wording is changed slightly so that in relation to 11B(1) the landlord under a private tenancy must supply and keep in repair and in proper working order.

EHNI would ask for guidance on provision of battery powered devices versus hard wired installation and location of installation like the new Scottish provisions, or perhaps this be contained in the Regulations made under this clause. EHNI is unsure as to what regime will be put in place for properties which have not presently got devices installed. Also EHNI

would like to know how this requirement will work for those with additional needs such as a hearing impairment who require specialist devices.

The Department should note that the requirement under Building Regulations for installation of smoke alarms only applies to properties built or substantially renovated after 1994.

Whilst it would appear that there is an offence under 11B (1) EHNI has concerns in relation to fire safety in those common parts of the tenancy as there does not appear to be an offence for this area in 11D. Section 11F states that a landlord is not obliged to repair the item, if they don't have knowledge of the disrepair. Guidance, advice, and information will need to be provided for tenants to ensure they have proof of reporting a fault. EHNI would ask that the reporting of disrepair to appliances be added to the tenant's duties in 11C. The Department could introduce regulations/guidance to be provided so that landlords will know of disrepair items through periodic checks/inspection of their properties

EHNI would like to know if the Department will publish guidance for landlords on the new requirements. If so, will the guidance be statutory or non-statutory? The new requirements are applicable to private tenancies on or after the date in which Section 8 of the new Act becomes law. It will also apply to tenancies before that date but only from a "prescribed date"; what will this "prescribed date" be? How will compliance with the new duties be monitored and enforced? Will there be mechanisms established whereby information can be shared by the Fire Service and local councils in respect of potential failures to adhere to the new requirements?

There will be an opportunity for Councils to discharge this offence through the fixed penalty regime.

Clause 9: Energy Efficiency Regulations

Clause 9 introduces Schedule 2 and notes its purpose with the provision of an enabling power to make regulations concerning the energy efficiency of dwelling houses let under a private tenancy. Regulations will be made so that a tenancy cannot be granted or let if the EPC is below a certain value.

Comment: *These proposals are welcomed, however there is currently very little detail as to what the minimum rating will be, or if it will be accompanied by some form of financial assistance model to help landlords upgrade their properties. The Department has indicated*

that it will be working with experts in energy efficiency and the Department of the Economy (who are developing the Energy Strategy) and will bring forward proposals on an appropriate EPC standard; the timeframes for delivery and proposals around exemptions for some properties. EHNI look forward to further consultation and information on new regulations would bring to the Departments attention to the need for an updated fuel poverty strategy considering the tenure with the highest proportion in fuel poverty in 2016 was the private rented sector (35,700; 26%), NIHCS 2016, NIHE.

Clause 10: Electrical safety standards Regulations

Clause 10 introduces Schedule 3 and notes its purpose with the provision of an enabling power for the Department to make regulations concerning electrical safety standards in private tenancies.

Comment: *The issue of electrical installations in the private rented sector have been a great concern for EHNI and we would welcome any requirement to have regular checks along with certification and enforcement. We would welcome new mandatory electrical testing such as that which exists in Scotland. The provisions there include properties to have fixed wiring checks, Electrical Installation Condition Report, at least every 5 years. The EICR must also include a PAT test (Portable Appliance Test) on portable electric appliances that the landlord has included as part of the rental. There should however be further consultation in regard to what is a competent person.*

EHNI would request that a copy of the EICR should be produced by the landlord on request by the enforcing Council within a specific time frame.

EHNI would request that a clause is included regarding Gas Safety with the requirement for annual checks by a registered gas engineer. This is enforced by HSENI at present but we would believe that as the enforcement authority for Private Tenancies Order 2006, this requirement would be better serviced by district councils with the offence included within Private Tenancies Order similar to the above mentioned Electrical requirements.

Clause 11: Notice to Quit

This clause will now extend the mandatory notice to quit period for landlords to provide to tenants to 8 weeks (after the first 12 months and until the tenancy is 10 years old). The notice to quit for tenancies longer than 10 years will remain unchanged at 12 weeks.

In the case where a notice by a landlord is issued for a tenant to quit a dwelling house under a private tenancy this will have to be provided in the prescribed form and must contain prescribed information as subsequently set by the Department in regulations.

In the case where a notice by a tenant is given, such a notice will need to be given in writing with the relevant period being 4 weeks if the tenancy has not been in existence for more than 10 years; 12 weeks if the tenancy has been in existence for more than 10 years.

This clause includes a provision to alter the notice to quit periods by way of regulations by draft affirmative procedure and must consult with landlord and tenant representatives before laying any drafts. The clause also gives a prescribed form and information to be contained in the notice.

Comment: *Proposal is welcomed but EHNI would welcome additional proposals in respect of grounds for eviction which other jurisdictions have in place to reduce the number of retaliatory evictions. The Department should consider the position of accidental tenants (e.g., family members of deceased and short-term rental arrangements)*